

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GLENN MCMILLAN,

Plaintiff,

v.

DAIRY FARMERS OF AMERICA, INC.

Defendant.

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C.A. NO. 4:19-cv-1423

JURY DEMANDED

COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff GLENN MCMILLAN (“Plaintiff”) and complains of Defendant DAIRY FARMERS OF AMERICA, INC. (“Defendant” or “Dairy Farmers of America”) and for his cause of action would show the Court as follows:

INTRODUCTION

1. This action seeks damages, attorneys’ fees, expert fees, taxable costs of the court, pre- judgment and post-judgment interest as a result of civilly wrongful conduct in violation of the laws of the United States, including 42 U.S.C. §1981.

PARTIES

2. Plaintiff GLENN MCMILLAN is a resident of Fayette County, Texas.

3. Defendant Dairy Farmers of America, Inc. is an entity that can be served with process through its registered agent, Corporation Service Company D/B/A CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

JURISDICTION AND VENUE

4. Jurisdiction is conferred on this Court by Title 28 U.S.C. §1331.

5. This action lies in the United States District Court for the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. § 1391(b), as the events giving rise to Plaintiff's claims occurred substantially in Fayette County, Texas.

CONDITIONS PRECEDENT

6. All conditions precedent have been performed or have occurred.

STATEMENT OF FACTS RELEVANT TO ALL CLAIMS

7. Plaintiff, Glenn McMillan, who is African-American, worked for Defendant Dairy Farmers of America, as a General Laborer beginning in January 2017.

8. During Plaintiff's employment with Defendant, his performance reviews were positive, and he was a productive employee. He received several raises during his employment with Defendant.

9. On April 26, 2017, Defendant terminated Plaintiff's employment, claiming that he had been caught sleeping while at work. However, Plaintiff was not sleeping at work. Furthermore, there are similarly situated white employees who have been caught sleeping at work but who have not been fired for it. Defendant maintains a practice of disciplining black employees more harshly than white employees for the same or similar conduct.

CAUSE OF ACTION

DISCRIMINATION UNDER 42 U.S.C. § 1981

12. The allegations contained in Paragraphs 1 through 11 are hereby incorporated by reference.

13. 42 U.S.C. §1981 prohibits race discrimination in the making and enforcing of contracts, including the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges and conditions of the contractual relationship.

14. Plaintiff is a member of a protected class and was selected for unfavorable treatment by Defendant, including being terminated from his employment as a General Laborer on or around April 26, 2017. There is no legitimate non-discriminatory reason for Defendant's actions, and if such a reason is propounded, it is a pretext. Unlawful discrimination moved Defendant toward its decisions or was a factor that played a part in Defendant's employment decisions as to Plaintiff. The unlawful practices committed by Defendants were and are a direct cause of Plaintiff's damages, as more fully set forth below.

DAMAGES

15. As a result of Defendant's unlawful conduct, Plaintiff has suffered economic and actual damages, including past and future lost income, back wages, interest on back pay and front pay, future wages or front pay, lost earnings in the past and future, lost benefits under the contract or employment relationship, employment benefits in the past, and employment benefits in the future. Plaintiff has also incurred other actual damages as a result of Defendant's unlawful conduct, including but not limited to past and future pecuniary losses, emotional pain

and suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, and other pecuniary and non-pecuniary losses.

16. Defendant has intentionally engaged in an unlawful employment practice by discriminating against Plaintiff. Plaintiff additionally brings suit for compensatory damages, including emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, job search expenses, lost earning capacity in the past and future, and other pecuniary and non-pecuniary losses.

17. The conduct committed by Defendant against Plaintiff is the type of conduct demonstrating malice or reckless indifference to the rights of the Plaintiff. Therefore, Plaintiff additionally brings suit for punitive damages.

ATTORNEYS' FEES AND EXPERT FEES

18. A prevailing party may recover reasonable attorneys' and experts' fees under 42 U.S.C. §1981. Plaintiff seeks all reasonable and necessary attorneys' fees in this case from Defendant, including preparation and trial of this lawsuit, post-trial, pre-appeal legal services, and any appeals. Plaintiff additionally brings suit for expert fees and all costs associated with the prosecution of this action.

JURY DEMAND

Plaintiff demands a trial by jury of all the issues and facts in this case and tenders herewith the requisite jury fee.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that:

1. The Court assume jurisdiction of this cause;
2. The Court award Plaintiff damages as specified above;
3. The Court award Plaintiff reinstatement or, in the alternative, front pay;
4. The Court award Plaintiff's reasonable attorneys' and expert fees and costs;
5. The Court award Plaintiff pre- and post-judgment interest at the highest rates allowed.

Plaintiff further prays for any such other relief as the Court may find proper, whether at law or in equity.

Respectfully submitted,

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/s/ Kell A. Simon

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